

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2142 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NILESHKUMAR BHIKHABHAI DOSHI

Versus

STATE OF GUJARAT

Appearance:

MR PK JANI for Petitioner
MR TRIVEDI, APP for Respondent No. 1
MR AM PAREKH for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/07/1999

ORAL JUDGEMENT

1. Rule. Mr. Parekh waives service of Rule on behalf of respondent No.2 and Mr. Trivedi waives service on behalf of respondent No.1.

2. Mr. Unwalla arguing for the petitioner submitted that the petition challenges the complaint lodged by respondent No.2 against present petitioner and one Naresh Chunilal Shah, alleging that they are the directors of one Crescent Colorcoat Systems Ltd., Ahmedabad and that a cheque of Rs.6,42,405/- dated 22nd September, 1998 on behalf of the said company came to be dishonoured by the bank and, therefore, after service of due notice, the complaint is filed. He submitted that the learned Magistrate has directed issuance of process by order dated 15.2.1999, which is under challenge.

3. Mr. Unwalla's contention is that the complaint is not against the company. The present petitioner, who is shown as accused No.2 in the complaint, is only a director of the company. He is not the signatory to the cheque. Two other directors who have signed the cheque are not joined as accused. Mr. Unwalla submitted that the notice dated 18th December, 1998 (Annexure-D), though purports to have been served by R.P.A.D./U.P.C., was, in fact, served on the petitioner on 7th January, 1999 by hand delivery and that too, to the wife of the petitioner. This fact is borne out from a notice issued by the petitioner through his advocate (Annexure-C), which is dated 8th January, 1999. This notice has not been replied to by the complainant. He submitted that this version of the petitioner is getting some support from the averment made in the complaint in paragraph 3 that this notice was delivered by hand delivery. Mr. Unwalla submitted that, if it is taken to have been delivered on 18th December, 1998, then also the complaint which is lodged on 15th February, 1999 would be time barred. In any case, the petitioner is not shown to be a person falling within the category as stated in Section 141(1) of the Negotiable Instruments Act, namely, that he was in-charge of and was responsible to the company for the conduct of business of the company and, therefore also, this complaint against the petitioner could not have been entertained by the learned Magistrate.

4. Mr. Parekh, on the other hand, has strongly opposed this petition. His contention is that when a company is served with a notice, there is no need for separate notice to any of the directors. He contended that it is for the petitioner as director to show that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence. Till then, the complaint cannot be quashed. It would be a matter of evidence.

5. Considering the rival side contentions, it

transpires that there is nothing to indicate that the petitioner is responsible to the company for conduct of the business of the company even prima facie. The notice is served on 18.12.1998 and the complaint is lodged on 15.2.1998. This would definitely be beyond the period of limitation as prescribed under the provisions of Section 138 of the Negotiable Instruments Act. Learned Magistrate has overlooked this aspect and, therefore, the order of issuance of summons against the present petitioner could not have been passed. The complaint qua the present petitioner, therefore, needs to be quashed so also the order of the learned Magistrate dated 15.2.1999 and, hence, the petition deserves to be allowed.

6. The petition is allowed. The complaint being Criminal Case No.75 of 1999 pending in the Court of learned Judicial Magistrate, First Class, at Unjha and the order passed by the learned Magistrate on 15.2.1999 stand quashed against the present petitioner only. Rule is made absolute accordingly.

[A.L. DAVE, J.]

gt